I. A SUBSTANTIAL FEDERAL QUESTION IS PRESENTED

Appellees concede in their brief in support of the Motion to Dismiss, as Appellants argued in their Jurisdictional Statement, that under recent decisions of this Court, state action resulting in constitutional deprivation is amenable to judicial correction even though the primary political power of the state is involved. (M/D, pp. 7, 11). This principle must be applied to municipal annexations as well as legislative apportionments. *Cf. Gomillion* v. *Lightfoot,* 364 U.S. 339 (1960).[1] The Appellees concede the correctness of this conclusion, citing *Gomillion* in support of the statement that:

> Federal courts have not failed to declare unconstitutional, unwarranted and arbitrary annexations, nor has this Court neglected to set aside the alteration of municipal boundaries where founded upon political discrimination. [M/D, p. 11]

Appellees, however, attempt to avoid this principle by first contending that no circumvention of a "federally protected right" has been shown (M/D, p. 11)—pointing to the turn-of-the-century decision of *Hunter* v. *City of Pittsburgh,* 207 U.S. 161 (1907).

However, this Court has recently stated that:

> When challenges to state action respecting matters of "the administration of the affairs of the State . . ." have rested on claims of constitutional deprivation *which are amenable to judicial correction,* this Court has acted upon its view of the

[1] Although the case arose in a Fifteenth Amendment context, this Court answered the argument that the State enjoyed unrestricted control over municipal boundaries in broad language: "Legislative control over municipalities, no less than other state power, lies within the scope of relevant limitations imposed by the United States Constitution." 364 U.S. at 344-45.

> merits of the claim. [*Baker* v. *Carr,* 369 U.S. 186, 229 (1962) (Emphasis added.)]

Pursuant to this doctrine state action which effectively dilutes the voting strength of various segments of its populous has been held violative of the Equal Protection Clause. *Reynolds* v. *Sims,* 377 U.S. 533 (1964); *Baker* v. *Carr, supra.*

Appellants' arguments relating to division of the proposed area for annexation and the resulting dilution of voting strength are, however, said to be "mere allegations denied by Appellees and not supported by any proof whatsoever. . . ."[2] (M/D, p. 7). This conclusion evades the basic factual background. The annexation election was so arranged that the weight of votes in the City was substantially greater than the weight of the votes of Appellants residing in the annexed territory. Voters in the City had the right to cast two votes for each one of the residents in the annexed territory. Thus, a resident in Zone 1 could not vote on Zone 2 annexation, and a resident of Zone 2 could not vote on Zone 1 annexation although the City voter could cast a vote on Zone 1 plus a vote on Zone 2. This division of the proposed area for annexation is a *per se* violation of the Equal Protection Clause:

> It would appear extraordinary to suggest that a State could be constitutionally permitted to enact a law providing that certain of the State's voters could vote two, five, or 10 times . . . while voters living elsewhere could vote only once. And it is inconceivable that a state law to the effect that, in

---

[2] Appellees further contend that Appellants have assumed that the residents of the annexed area "overwhelmingly favored annexation." (M/D, p. 7). This, of course, is an erroneous assertion since Appellants have argued throughout that the affected residents, which as a class they represent, *did not* favor annexation.

> counting votes . . . the votes of citizens in one part of the State would be multiplied by two, five, or 10, while the votes of other persons in an other area would be counted only at face value, could be constitutionally sustainable. [*Reynolds* v. *Sims*, *supra* at 562][3]

Moreover, if there had been two separate elections (one for Zone 1 and another for Zone 2) the weight of votes in only one zone would have been equal to the weight of votes in the City. This, too, would result in arbitrary and discriminatory procedure as to persons residing in at least one zone.[4]

Appellees cannot escape the fact that any procedure for the annexation election not based upon a combination of Zones 1 and 2 with the weight of votes in the combined territory equal to the weight of votes in the City, would arbitrarily and discriminatorily dilute the votes of persons in the annexation territory *vis-a-vis* the votes of persons in the City. Such a result is con-

---

[3] The closeness of the election results bears out the significance of the doubled voting power of city dwellers:

Zone 1		Zone 2	
For	Against	For	Against
1506	887	1256	1023

The outcome could well have been different if the election had not been so arranged that the votes of persons in the City counted for two of persons in Zones 1 and 2.

[4] In that instance, assuming a first election on Zone 1 and a second election on Zone 2, persons in Zone 2 would have been denied a vote on Zone 1 annexation but the persons in Zone 1 could have voted on annexation of Zone 1 in the first election plus voting on Zone 2 in the second election if the first election resulted in annexation. This procedure would have been constitutionally objectionable as an obvious plan to dilute the votes of persons in Zone 2 with respect to annexation of Zone 1 as well as Zone 2. Accordingly, the holding of two elections could not save this annexation from constitutional limitations.

stitutionally impermissible under principles established by this Court in the legislative apportionment cases.

II. NO ADEQUATE STATE GROUND EXISTS

Appellees argue that the judgment below rests upon an adequate state ground. It has been consistently held, however, that although States may exercise powers wholly within the domain of their interests, immunity from federal review "is not carried over when state power is used as an instrument for circumventing a federally protected right." *Gomillion* v. *Lightfoot, supra* at 347.

III. CONCLUSION

The concession by Appellees that municipal annexations are subject to relevant constitutional limitations is decisive of the case. The patent effect of the division of territory by the Appellees was to dilute the weight of votes of persons in that territory in violation of constitutional principles enunciated by this Court in the legislative apportionment cases. The right to participate democratically in proceedings *directly affecting* the status of an individual's property clearly reaches the proportion of judicially protected political rights.

It is submitted that the Jurisdictional Statement presents a problem of nationwide importance which demands a brief on the merits and ultimate resolution by this Court.

Respectfully submitted,

PARKS M. CARMICHAEL
Post Office Box C
Gainesville, Florida 32601
Attorney for Appellants

ROBERT J. CORBER
1250 Connecticut Ave., N.W.
Washington, D. C. 20036
Of Counsel